IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 509 of 2004

to

FIRST APPEALNo 510 of 2004

Date of Decision: 19.3.2004

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

GAURIBEN WD/O DAHYABHAI RUDABHAI

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble

Whether approved for reporting?

MS. ROOPAL PATEL Advocate for Appellant GSRTC.

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

Both these appeals are proposed to be decided by this common judgment since they are arising out of the same incident and common award. In First Appeal No. 509 of 2004, challenge is confined to negligence alone while

in First Appeal No. 510 of 2004, challenge is for both, negligence and quantum of compensation.

Whether reporters of Local Papers may be allowed to see the Judgment?

Shortly stated, the accident took place on August 17, 1992. Rajnikant Ramanlal Patel and Dahyabhai Rudabhai Makwana were going to Ahmedabad from Dholka on scooter with side car bearing Registration No. GBP 7721. The claimants submit that the scooter was going on at the normal speed on correct side of the road but the State Road Transport Corporation Bus bearing Registration No. GRU 7963 coming from the opposite side driven rashly and negligently, dashed against the scooter resulting in death of both the occupants. The speed of the bus was so high that the scooter got entangled in the front portion of ST Bus and dragged under the ST Bus to a distance of about 95' thereafter, the bus could be stopped. Complaint was lodged at the police station. The case has been registered and still under trial. Driver of the bus was punished in departmental inquiry, two increments stopped by way of punishment. The case of the appellant is that the driver was not negligent in driving the bus, rather, the scooter was not being driven properly on the correct side of the road, therefore, accident took place. Consequently, the Claims Tribunal should have appreciated these facts so the findings recorded against the bus are not sustainable.

With regard to the compensation in First Appeal No. 510 of 2004, the submission is that excessive compensation has been awarded; instead of multiplier of 15, 13 should have been applied as per the IInd Schedule to the Motor Vehicles Act, 1988.

Examined the matter with regard to negligence. It is found that at the place of accident road is 24' wide. It is a straight road. Scooter with side car is a small vehicle. It cannot be driven at fast speed because of the obstruction caused by fitting of the side car. It does not occupy much space on the road. Therefore, it is not expected that it would be driven at high speed and in the middle of the road. Fact that the bus dragged the scooter to a distance before it was stopped goes to show that the driver of the bus was driving the bus rashly and at excessive speed. In the totality of the circumstances, it cannot be said that the scooter was

being driven rashly and negligently therefore, responsible for the accident. Rather, the findings of the Claims Tribunal against the bus driver are justified therefore, sustainable on available evidence examined minutely. The compensation awarded is also just. Second question pertains to award of compensation to Rajnikant who was 47 year old at the time of accident, earning from the shop which he seems to have purchased. After the accident, he left behind the widow and other members of the family. They were dependent on him. The Claims Tribunal has assessed the compensation of Rs.3,37,500.00 after making proper deduction. So far as the application of multiplier is concerned, Second Schedule is a guide and deviation can be there in case facts of the case justify. Therefore, the contention that the higher multiplier has been given is not acceptable. Tribunal has to consider the facts of the case and award suitable compensation by use of higher multiplier. Consequently, we find no merit in the submissions, as such, the appeals are dismissed.

[BHAWANI SINGH]
CHIEF JUSTICE

[H.K.RATHOD]
JUDGE
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